

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT  
(DIVISION OF VOCATIONAL REHABILITATION)

In the Matter of the Application for Vocational Rehabilitation Assistance by Norman Mallory	<b>DECISION OF THE IMPARTIAL HEARING OFFICER</b>
---	--

The above matter came on for hearing before Administrative Law Judge (ALJ) Richard C. Luis, acting as an Impartial Hearing Officer under 34 C.F.R. § 361.57(e), at the Division of Vocational Rehabilitation Office of the Department of Employment and Economic Development in Winona on November 8, 2005.

Trisha L. Matzek, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, MN 55101, appeared on behalf of the staff of the Vocational Rehabilitation Services of the Department of Employment and Economic Development ("Agency", "Department"). Norman Mallory, 503 East Seventh Street, Winona, MN 55987, appeared on his own behalf, representing himself. The record in this matter closed with the filing of a letter/brief from Ms. Matzek on November 16, 2005.

NOTICE

Pursuant to 34 C.F.R. § 361.57(e)(4) and (g), this report is the final decision of the state agency in this matter, unless Mr. Mallory files for an impartial review within 20 calendar days of the mailing of this Decision. Within 20 days from the date of this Decision, Mr. Mallory may file for impartial review with Matt Kramer, Commissioner, Minnesota Department of Employment and Economic Development, 390 North Robert Street, St. Paul, MN 55101. Either party may submit additional evidence and information to the Commissioner for consideration during the review.

STATEMENT OF ISSUE

Whether Norman Mallory has established that he qualifies for assistance in occupational training and/or job placement from the Department because of a learning disability.

Based on all the proceedings herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. On January 26, 2005, Norman Mallory applied for vocational rehabilitation assistance, stating in his application<sup>1</sup> that he was disabled in reading and math. He also alleged that his race (Mr. Mallory is African-American) and age (Mr. Mallory is 52 years old) made it hard for him to get or keep a job.

2. On March 15, 2005, a report was issued by Richard N. Cocker, a licensed psychologist at the Winona Counseling Clinic, who reported that he made an attempt to explain to Mr. Mallory the necessity of putting forth a full effort in order to produce valid scores, but “for reasons unknown” that effort did not appear to have occurred and the testing of Mr. Mallory should be considered invalid. Mr. Cocker was unable to diagnose reliably whether or not Mr. Mallory was mentally retarded or learning disabled.<sup>2</sup>

3. The results of the testing of Mr. Mallory in verbal areas such as vocabulary, similarities, information, and comprehension came out extremely low, as did his results in matrix reasoning, picture arrangement, symbol search and picture completing. His scores for verbal comprehension, perceptual organization, working memory and processing speed all were in the bottom one-tenth of one percent. On the Woodcock Johnson Tests of Achievement, Mr. Mallory scored in the equivalent range of a 5-year old in Calculation and on the 3 to 8-year old range in “Broad Mathematics.” His results indicated he could not read all the letters in the alphabet or add 2+2 or 1+3 and could not pick out a bird among pictures of four different animals. The test scores were considered invalid by Mr. Cocker because Mr. Mallory has finished high school, was admitted to the U.S. Marines, reported working successfully for the Army Corps of Engineers for five years, and has no recent history of brain trauma.<sup>3</sup>

4. Mr. Cocker and the Vocational Rehabilitation Specialist at the Winona office of the Department of Employment and Economic Development concluded that Mr. Mallory was malingering when he took the tests.

5. On March 22, 2005, the Department issued a determination/assessment for determining eligibility to Mr. Mallory, in which it concluded that he had no impairments, but added a note that the Department was “unable to determine impairment”. The determination declared him ineligible for vocational rehabilitation assistance benefits because he had no impairment.<sup>4</sup>

6. On June 2, 2005, Mr. Mallory requested, in writing, an appeal hearing on the determination issued by the Agency. The Agency stipulated that Mr. Mallory’s appeal was timely.

Based on the above Findings, the Administrative Law Judge makes the following:

---

<sup>1</sup> Ex. 1.

<sup>2</sup> Ex. 3.

<sup>3</sup> Ex. 3.

<sup>4</sup> Ex. 4.

## CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter pursuant to 34 C.F.R. § 361.57.

2. The Notice of the Hearing to Mr. Mallory was proper and all procedural requirements have been met.

3. Mr. Mallory failed to establish that the determination of ineligibility for vocational rehabilitation benefits was erroneous.

4. Mr. Mallory has not established that he is impaired to the degree that he qualifies for vocational rehabilitation assistance.

Based on the above Conclusions, the Administrative Law Judge makes the following:

## ORDER

**IT IS ORDERED** that the determination by the Minnesota Department of Employment and Economic Development, Rehabilitation Services Branch, that Norman Mallory is ineligible for vocational rehabilitation services is **AFFIRMED**.

Dated this 16th day of April, 2011

/s/ Richard C. Luis  
RICHARD C. LUIS  
Administrative Law Judge

Reported: Taped

## MEMORANDUM

In order to be eligible for vocational rehabilitation services assistance, an applicant must have a disability, the disability must be an impairment to employment, the applicant must need the vocational rehabilitation services assistance in order to qualify for entry into the labor market, and it must be established that the applicant will benefit from the services. In this case, the threshold determination of whether Mr. Mallory has a disability has not been met. Mr. Mallory is unable to overcome the strong evidence in the record that he did not try sufficiently to score to the best of his ability on the employment aptitude tests administered to him during his assessment by the Winona Counseling Clinic.

Mr. Mallory argues that he needs additional testing, but the Administrative Law Judge is not persuaded. The Judge conducted a conversation with Mr. Mallory on a wide range of subjects, including his military career and his high school days as an athlete. He also attended a community college for two years.<sup>5</sup>

---

<sup>5</sup> Ex. 2.

Mr. Mallory's responses were coherent and rational, inconsistent with the low scores he "achieved" during the assessment at Winona Counseling Clinic. Mr. Mallory has offered no evidence to establish that he actually is impaired. His contention that he was not tested on reading, writing and math is not supported by the test results.

It is noted also that no evidence of race or age discrimination has been established.

The ALJ agrees with Mr. Cocker and the Department that Mr. Mallory was likely attempting to score low on the tests he was offered. The only logical conclusion with respect to his eligibility for vocational rehabilitation from the record is that the evaluation of Mr. Mallory cannot support his eligibility. Since there is no other evidence to establish his eligibility for benefits, the determination that Norman Mallory is ineligible has been affirmed.

**R.C.L.**